

October 24, 2007

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**STIPULATED REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **E9500309**

**DONALD DAVIS**

Code Enforcement Appeal

Location: 19619 Robinwood Road Southwest, Vashon (in the Sunset Beach area  
on the Colvos Passage shoreline)

Appellant: Donald Davis  
*represented by* **Robert M. Krinsky**, Attorney at Law  
P.O. Box 13559  
Burton, Washington 98013  
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King County: Department of Development and Environmental Services (DDES)  
*represented by* **Sheryl Lux**  
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Renton, Washington 98055-1219  
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**SUMMARY OF RECOMMENDATIONS/DECISION:**

Department's Preliminary Recommendation:	Deny appeal with revised compliance schedule
Department's Final Recommendation:	Deny appeal with revised compliance schedule
Examiner's Decision:	Deny appeal with further revised compliance schedule

**EXAMINER PROCEEDINGS:**

Hearing opened:	August 8, 2006
Hearing continued on call:	August 8, 2006
Hearing closed:	July 26, 2007

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.  
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. In late 1994, a landslide occurred on the shoreward portion of the subject property, which is an RA-2.5P-zoned property located at 19619 Robinwood Road Southwest on unincorporated Vashon Island and which was purchased by the Appellant in 1983. An Exemption from Shoreline Management Substantial Development Permit (shoreline exemption) was applied for in 1995 under file L95SH025 and granted by DDES (or its predecessor agency) for the construction of a bulkhead to stabilize the property's slope and in part to protect an accessory dwelling unit (ADU) existing onsite.<sup>1</sup>
2. The King County Department of Development and Environmental Services (DDES) issued a code enforcement Notice and Order under the instant file number on August 9, 1995, requiring that building permits be obtained for the ADU and another structure onsite, a garage. The August 9, 1995 Notice and Order was not appealed.
3. A shoreline variance application was submitted to the County under file L95SH132 to legalize the ADU, which has been termed a "guest cottage," constructed in or around 1990.<sup>2</sup> Lengthy interruptions of the variance application review occurred, with some discussions occurring in 1998 regarding the need for additional information; an applicant indication that responses would be made; later communications in 1999 between the Appellant and DDES; and then no indication of further communication until the variance application was voided by DDES as not pursued by the Applicant, with cancellation on February 7, 2006.
4. On May 5, 2006, DDES issued a Supplemental Notice and Order to Appellant Donald Davis. The Supplemental Notice and Order cited Mr. Davis and the property with the following violations of county code:
  - a. Construction of an accessory dwelling unit (ADU) without the required permits, inspections and approvals, and within environmentally critical areas (Conservancy Shoreline, Landslide, Erosion, Aquatic and Critical Aquifer Recharge Areas) and/or their buffers.
  - b. Construction of a detached garage without the required permits, inspections and approvals within the required building setback from an adjacent road and within environmentally critical areas as noted above, and/or their buffers.

The Notice and Order required correction of such violations by obtainment of the required permits, inspections and approvals, with a complete application to be submitted by August 7, 2006 or, alternatively, demolition and removal of the non-permitted construction by such date. The Notice and Order noted that due to the non-conforming lot size of the property, only one dwelling unit is permitted on the lot, and that therefore the ADU could not be permitted onsite as a dwelling unit and would need to be either demolished or permitted as another use.

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<sup>1</sup> A separate main residence was constructed on the site in 1947; it is not at issue in this proceeding.

<sup>2</sup> The date of construction of the garage is indeterminate from the evidence in the record but is thought to have been performed sometime between 1977 and the initiation of the code enforcement action in 1995. There is no evidence in the record of permit applications or permits issued for the construction of any structures on the subject property prior to 1995, and DDES indicates that no such records are evident.

5. Mr. Davis filed a timely appeal of the Supplemental Notice and Order, making a claim of *equitable estoppel* against the County, contending that the County should be *estopped* from the subject code enforcement action since the County essentially was aware of the existence of the ADU at the time of the 1994 landslide, granted a shoreline exemption for installation of the bulkhead (which was installed at significant cost, which costs also included the costs of stabilizing the structural support for the ADU), and did not inform Mr. Davis that the ADU was of suspect legality or in violation of County permitting and other regulatory requirements prior to approving the shoreline exemption for the expensive bulkhead/stabilization work.
6. Appellant Davis acknowledges that a permit condition attached to approval of the shoreline exemption was that a shoreline variance application to legalize the existing ADU structure was required to be submitted. The Appellant notes that such application was submitted in 1995, but that the County did not respond to the application until prompted by the Appellant in late 1999, at which time it became the understanding of Mr. Davis from his discussions with DDES that his forgiving the time delay would result in no further code enforcement action by the County regarding the ADU. There is no evidence in the record supporting such contention other than Mr. Davis's statements in such regard.
7. Mr. Davis contends that he relied upon the actions of King County in proceeding with the installation of the retaining wall and stabilization actions and that he is being prejudiced by the County in its code enforcement actions, particularly since the County failed to take action on the shoreline variance application.
8. With respect to the garage, the Appellant asserts that the County is obligated to assist him in understanding the permit requirements associated with the garage construction so that he can take steps to obtain the permit. The Appellant contends that permitting requirements on the garage "were deferred" pending completion of the retaining wall and ADU stabilization.
9. In summary, the Appellant's claim is that through its actions and/or inactions, the County made representations and/or waivers upon which the Appellant relied in proceeding to make significant development improvements, the value of which is now jeopardized by the County's enforcement actions against the ADU which was protected at great expense by the retaining wall/bulkhead/stabilization improvements approved by the County.
10. Nevertheless, the Appellant stipulates to the black letter law regulatory violations presented by the lack of issued permits for the ADU and the garage, *i.e.*, the status of such work constitutes a violation of County regulations established by codified ordinance. The Appellant acknowledges that the ADU and garage, by virtue of their having been constructed without the proper permits and other reviews required by the Critical Areas Regulations and other code provisions as cited by the Notice and Order, are in violation of County code as found by the Notice and Order.
11. However, the Appellant reserves his claim of equity against the County, that the County should be *estopped* from enforcing such black letter law regulation due to the inequities caused by the County's role in establishing his reliance on County exemptions, actions/inactions and asserted or alleged representations. The Appellant also claims that the prejudice noted above should be subject to *estoppel by laches*, since the County has dragged the instant case out so long that witness availability is questionable. However, the Appellant has not identified any such witnesses who are no longer available or whose memories may no longer serve to provide a reliable account of observations and knowledge regarding the case.

13. As the Appellant acknowledges, the Examiner cannot address the Appellant's complaints from a common law equity standpoint. The Examiner is without jurisdiction to consider matters of equity in the law. They must instead be taken to a court of general jurisdiction, the Superior Court. The Examiner is generally limited to applying "black letter" law as duly enacted by statute, ordinance and rule, and has no authority to adjudicate common law issues such as claims in equity. [*Chaussee v. Snohomish County*, 38 Wn.App. 630; 689 P.2d 1084 (1984)]
14. Lastly, the Appellant believes that he has a "contract" with the County whereby he should be able to convert the ADU to unheated storage without permits being required, given the County's alleged implied commitments. Whether such conversion may occur without permits is not a matter under the Examiner's jurisdiction in this case, and may depend on the square footage of the structure and the thresholds for permit requirements. Otherwise, it is again a matter of common law claim in equity.
15. The Appellant requests a longer period for compliance than recommended by DDES (60 days for submittal of variance applications and a completed building permit application within 30 days of variance approval, and/or demolition of any structure that is denied a permit within 30 days of denial), by granting at least 60 additional days, and a full year for demolition under a demolition permit rather than the short time frame recommended by DDES.

#### CONCLUSIONS:

1. As noted in the above Findings, the Appellant has stipulated that the two structures at issue were constructed without the benefit of required permits, inspections and approvals as cited by the Notice and Order, and therefore the Notice and Order's found violations of codified regulations are correct and shall be sustained.
2. Also as noted above, the Examiner has no jurisdiction over the Appellant's claims in equity, and therefore reaches no conclusions of law regarding those aspects of the Appellant's claims on appeal.
3. Given the length of time that this case has been alive, the reasonable need of the Appellant to research the viability of making variance applications and any follow-on building permit applications, and to assess the relative costs of such permits, related reviews and resultant construction requirements (versus demolition, as the Appellant indicated was a likely alternative pursuit), the Examiner concludes that a relatively relaxed compliance time schedule is appropriate in this case. Of additional consideration in such regard is that if the demolition option is chosen by the Appellant, the allowance of close to the normal full year period for demolition under a demolition permit is preferable in the instant case rather than the very short timeframe recommended by DDES, given the advent of the rainy season and resultant potentially problematic erosion and debris spread possibilities aggravated by wet weather. A longer timeframe, through the next dry season, will allow the demolition to occur in a more orderly fashion with less potential for environmental damage such as erosion, sedimentation, etc.

#### DECISION:

Based on the stipulated regulatory violations, and also acknowledging the reservation of the Appellant of his claims in equity, the appeal is DENIED and the Notice and Order sustained, except that the compliance requirements shall be revised as stated in the following order.

## ORDER:

1. If the Appellant/property owner desires to retain the “Accessory Dwelling Unit (ADU)” structure onsite, a complete application for the necessary shoreline variance for use of the structure as an allowed use under applicable County regulations shall be submitted to DDES *by no later than January 25, 2008*. Any and all deadlines for agency-requested further information for processing of the permit shall be met.
2. If the Appellant/property owner desires to retain the ADU structure onsite, a complete application for the necessary building and ancillary permits, inspections and approvals for construction and use of the structure as an allowed use under applicable County regulations shall be submitted to DDES *by no later than sixty (60) days after approval of the above shoreline variance permit*. (Prior obtainment of sanitation approval by the Health Department may be required; consult DDES). Any and all deadlines for agency-requested further information for processing of the permit(s) shall be met and the permit(s) obtained within required deadlines, if approved.
3. As an alternative to seeking the necessary permits, inspections and approvals for the ADU structure, the structure may instead be demolished and the debris removed *by no later than September 30, 2008*, with obtainment of a demolition permit as may be required by DDES and removal of the demolition debris from the site and disposal at an approved facility.
4. If the permit application option is chosen by the Appellant/property owner but any permit is ultimately denied which disallows the ADU structure from being allowed to remain onsite, or if after the above variance application is approved, the Appellant/property owner fails to follow up with a complete building permit application by the required submittal date, demolition and/or removal of the non-permitted construction shall be completed *by no later than September 30, 2008, or within ninety (90) days from the date of written permit denial or of the failure of the Appellant/property owner to submit a follow-on building permit application as required under number 2 above, whichever is later*, under the same demolition requirements as above.
5. The above permit application/demolition requirements and their relative deadlines shall apply in identical form to the garage structure, except that the Appellant/property owner shall also file a complete application for any building setback variance deemed necessary by DDES along with the shoreline variance application, and the requirement for follow-on building permit application submittal within sixty days shall apply based on the **later** issuance or denial of the two permits (shoreline variance and setback variance), as well as timely responses to agency-requested further information, permit obtainment, etc.
6. No penalties shall be assessed by DDES against Mr. Davis and/or the property if the above deadlines are complied with. If any one of them is not, DDES may assess penalties against Mr. Davis and/or the property retroactive to the date of this order as provided by County code.

ORDERED October 24, 2007.

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Peter T. Donahue  
King County Hearing Examiner

TRANSMITTED October 24, 2007 via certified mail to the following:

Donald N. Davis  
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Vashon, WA 98070

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TRANSMITTED October 24, 2007, to the following parties and interested persons of record:

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#### **NOTICE OF RIGHT TO APPEAL**

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code compliance appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE AUGUST 8, 2006, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E9500309.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Sheryl Lux, representing the Department, and Robert Krinsky, representing the Appellant.

PTD:gao  
E9500309 RPT